IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Bail Appl..No. 5074 of 2007()

C.R.NO.135/06 OF NEDUMANGAD EXCISE RANGE PENDING BEFORE J.F.C.M-II, NEDUMANGAD

PETITIONER/2ND ACCUSED:

PRABHA, S/O. JOHNSON,
IRUMBA KUMMI LEKSHAM VEEDU, ARUVIKKARA.

BY ADV. SRI.A.RAJASIMHAN

RESPONDENTS: COMPLAINANT:

EXCISE INSPECTOR,
NEDUMANGAD EXCISE RANGE, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5074 of 2007

Dated this the 21st day of August 2007

O R D E R

Application for anticipatory bail. The petitioner, along with the co-accused, faces allegations of having kept in their possession 15 litres of arrack on 13/12/2006. Seeing the detecting excise party, the petitioner allegedly took to his heels. The first accused was arrested. The investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent of the allegations. He was not present along with the first accused at all, it is submitted. Anticipatory bail may, in these circumstances, be granted to the petitioner, prays the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegations clearly point to the complicity of the petitioner. The contemporaneous seizure mahazer as also the occurrence report do clearly reveal the presence and complicity of the petitioner. In these circumstances, anticipatory bail may not be granted to the petitioner, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. I do not find any features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007